

In the United States District Court
For the Northern District of Illinois
Eastern Division

DIGISOUND-WIE, INC.,

Plaintiff,

v.

BESTAR TECHNOLOGIES, INC., et al.,

Defendants.

07 CV 6535

Judge Lindberg

Magistrate Judge Mason

Plaintiff's Motion to Extend Time to Answer Counterclaim

Plaintiff Digisound-WIE, Inc. moves pursuant to FED.R.CIV.P. 6(b)(1)(B) to extend the time answer defendant Dirk de Young's Counterclaim:

1. Digisound-WIE should have answered the Counterclaim by May 30th, but its counsel inadvertently failed to record the date in the firm's docketing system. As a result Digisound-WIE's counsel overlooked that an answer was due.

2. Given that de Young waited until August 8th to move for a default, filing the proposed Answer (attached to this Motion) to the Counterclaim, which alleges \$5500 in contract damages, now will not prejudice him.

THEREFORE, Digisound-WIE requests entry of an order extending the time for it to serve and file its Answer to the Counterclaim of Dirk de Young.

DIGISOUND-WIE, INC.

By: s/ Arthur Sternberg
One of Its Attorneys

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Digisound-WIE's Answer to Dirk de Young's Counterclaim

Counter-Defendant Digisound-WIE, Inc. answers Counter-Plaintiff Dirk de Young's

Counterclaim:

1. Counter-Plaintiff Dirk de Young is an individual residing at 6334 S. Volcano Lane, Hereford, Arizona, 85615. He was formerly employed by Counter-Defendant, DigisoundWIE, Inc. ("Digisound-WIE"), as a sales director from approximately October 2001 through June 23, 2007.

Answer: Digisound-WIE admits the allegations in ¶ 1 of the Counterclaim.

2. Counter-Defendant Digisound-WIE is an Illinois corporation with its principal place of business in Libertyville, Illinois.

Answer: Digisound-WIE admits the allegations in ¶ 2 of the Counterclaim.

3. Jurisdiction is proper under 28 U.S.C. § 1367 because this counterclaim arises out of the same facts and nucleus of events as the Amended Complaint in this matter.

Answer: Digisound-WIE admits the allegations in ¶ 3 of the Counterclaim.

COUNT I — BREACH OF CONTRACT

4. Counter-Plaintiff Dirk de Young re-alleges Paragraphs 1-4 above as fully set forth herein.

Answer: Digisound-WIE repeats its answers to ¶¶ 1-3 as its answer to ¶ 4 of the Counterclaim.

5. On or about September 2001, Dirk de Young entered into an employment agreement (“the Agreement”) with Digisound-WIE. (See Employment Agreement attached as Exhibit “A” to Digisound-WIE’s Amended Complaint.)

Answer: Digisound-WIE admits the allegations in ¶ 5 of the Counterclaim.

6. Section 7(a) of the Agreement provides, in part:

Throughout the term of this Agreement, Digisound shall provide a stipend of \$250 per month for the expenses of a home office utilized by de Young for purposes within the scope of de Young’s employment by Digisound, as well as pay all related expenses for maintenance and monthly service charges.

Answer: Digisound-WIE admits that § 7(a) of the Agreement states the above.

7. Pursuant to Section 7(a) of the Agreement, Digisound-WIE was required to pay a minimum monthly stipend of \$250.00 to Dirk de Young.

Answer: Digisound-WIE denies the allegations in ¶ 7 of the Counterclaim. It further states that § 7(a) applied when de Young lived in Wisconsin and Digisound-WIE’s office was in Illinois.

Because of the distance between home and office, de Young maintained a home office in Wisconsin, for which Digisound-WIE paid \$250 a month. Digisound-WIE consented, however, to de Young moving his residence and Digisound-WIE’s office to Arizona. Because the office was located close to his residence, de Young no longer maintained a home office for purposes within the scope of his employment with Digisound-WIE. Accordingly, de Young was no longer contractually entitled to the \$250 a month stipend.

8. However, Digisound-WIE failed to pay Dirk de Young amounts due each month pursuant to Section 7(a) since at least August 2005 through June 2007.

Answer: Digisound-WIE denies the allegations in ¶ 8 of the Counterclaim.

9. Digisound-WIE's failure to pay constituted a material breach of the Agreement.

Answer: Digisound-WIE denies the allegations in ¶ 9 of the Counterclaim.

10. Dirk de Young fully performed any and all of his obligations, including any conditions precedent, under the Agreement.

Answer: Digisound-WIE denies the allegations in ¶ 10 of the Counterclaim.

11. As a direct and proximate result of Digisound-WIE's material breach of the Agreement, Dirk de Young has been damaged.

Answer: Digisound-WIE denies the allegations in ¶ 11 of the Counterclaim.

DIGISOUND-WIE, INC.

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